

Attachment A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

JAN 27 2020

Lavell Bone

U.S. DISTRICT COURT
ELKINS WV 26241

Your full name

FEDERAL CIVIL RIGHTS
COMPLAINT
(BIVENS ACTION)

v.

Civil Action No.: 5:20cv15
(To be assigned by the Clerk of Court)

LT. Whetstone / Ofc. Lewis

Ofc. Fahery, Ofc. Kitchen

Associate Warden Mr. Keyes

Individual and Official Capacity all defendants
Enter above the full name of defendant(s) in this action

Bailey
Mazzone
Blalock

I. JURISDICTION

This is a civil action brought pursuant to **Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)**. The Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§ 1331 and 2201.

II. PARTIES

In Item A below, place your full name, inmate number, place of detention, and complete mailing address in the space provided.

A. Name of Plaintiff: Lavell Bone Inmate No.: 60154-019
Address: 1100 One Mile Road Thomson, IL 61285

In Item B below, place the full name of each defendant, his or her official position, place of employment, and address in the space provided.

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B. Name of Defendant: LT. Whetstone
 Position: Lieutenant
 Place of Employment: Hazelton U.S.P.
 Address: 1640 Sky View Dr. Bruceston Mills, WV 26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: LT. Whetstone told multiple C.O.s to stick their finger in my anal. LT. Whetstone also physically assaulted me for filing a PHEA on him and his C.O.s.

B.1 Name of Defendant: Ofc. Fabery
 Position: Correctional Officer
 Place of Employment: Hazelton USP
 Address: 1640 Sky View Dr. Bruceston Mills, WV 26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: Ofc. Fabery sexually assaulted me by sticking his finger in my anal.

B.2 Name of Defendant: Ofc. Lewis
 Position: Correctional Officer
 Place of Employment: Hazelton USP
 Address: 1640 Sky View Dr. Bruceston Mills, WV 26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

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If your answer is "YES," briefly explain: I'm not sure if this C.O. stuck his finger in my anal because I was passed out but he never reported this incident to the appropriate administrators.

B.3 Name of Defendant: Ofc. Kitchen
 Position: Correctional Officer
 Place of Employment: Hazleton USP
 Address: 1640 Sky View Dr. Bruceton Mills, WV
26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: Ofc. Kitchen Sexually assaulted me by sticking his finger in my anal

B.4 Name of Defendant: Mr. Keyes
 Position: Associate Warden / PREA Coord.
 Place of Employment: Hazleton USP
 Address: 1640 Sky View Dr. Bruceton Mills, WV
26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: A.W. Mr. Keyes was the PREA Coord. When this assault happened to me, I explained to Mr. Keyes that I needed medical attention because I was sexually assaulted and he refused to take the necessary steps to protect me.

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B.5 Name of Defendant: N/A
 Position: N/A
 Place of Employment: N/A
 Address: N/A

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☐ Yes ☐ No

If your answer is "YES," briefly explain: N/A

III. PLACE OF PRESENT CONFINEMENT

Name of Prison/ Institution: AUSP Thomson

A. Is this where the events concerning your complaint took place?
☐ Yes ☒ No

If you answered "NO," where did the events occur?

Hazelton USP

B. Is there a prisoner grievance procedure in the institution where the events occurred? ☒ Yes ☐ No

C. Did you file a grievance concerning the facts relating to this complaint in the prisoner grievance procedure?
☒ Yes ☐ No

D. If your answer is "NO," explain why not: _____

E. If your answer is "YES," identify the administrative grievance procedure number(s) in which the claims raised in this complaint were addressed

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and state the result at level one, level two, and level three. **ATTACH GRIEVANCES AND RESPONSES:**

LEVEL 1 My Complaint will be forward to the appropriate dept
 LEVEL 2 for further investigation (All 3 levels)
 LEVEL 3 _____

IV. PREVIOUS LAWSUITS AND ADMINISTRATIVE REMEDIES

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action? ☐ Yes ☒ No

B. If your answer is "YES", describe each lawsuit in the space below. If there is more than one lawsuit, describe additional lawsuits using the same format on a separate piece of paper which you should attach and label: "IV PREVIOUS LAWSUITS"

1. Parties to this previous lawsuit:

Plaintiff(s): N/A

Defendant(s): N/A

2. Court: N/A
(If federal court, name the district; if state court, name the county)

3. Case Number: N/A

4. Basic Claim Made/Issues Raised: N/A

5. Name of Judge(s) to whom case was assigned:
N/A

6. Disposition: N/A
(For example, was the case dismissed? Appealed? Pending?)

7. Approximate date of filing lawsuit: N/A

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8. Approximate date of disposition. Attach Copies: N/A
- C. Did you seek informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part B?
☒ Yes ☐ No
- D. If your answer is "YES," briefly describe how relief was sought and the result. If your answer is "NO," explain why administrative relief was not sought.
I was told I couldn't be notified of the
investigation.
- E. Did you exhaust available administrative remedies?
☒ Yes ☐ No
- F. If your answer is "YES," briefly explain the steps taken and attach proof of exhaustion. If your answer is "NO," briefly explain why administrative remedies were not exhausted.
I filed a BP-8, BP-9, BP-10, and BP-11
(I submitted these grievances with the first Summons
and Complaint forms)
- G. If you are requesting to proceed in this action *in forma pauperis* under 28 U.S.C. § 1915, list each civil action or appeal you filed in any court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using the same format on a separate sheet of paper which you should attach and label "G. PREVIOUSLY DISMISSED ACTIONS OR APPEALS"
1. Parties to previous lawsuit: N/A

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Plaintiff(s): N/ADefendant(s): N/A

2. Name and location of court and case number:

N/A

3. Grounds for dismissal:
- ☐
- frivolous
- ☐
- malicious
-
- ☐
- failure to state a claim upon which relief may be granted

4. Approximate date of filing lawsuit:
- N/A

5. Approximate date of disposition:
- N/A

V. STATEMENT OF CLAIM

State here, as **BRIEFLY** as possible, the facts of your case. Describe what each defendant did to violate your constitutional rights. **You must include allegations of specific wrongful conduct as to EACH and EVERY defendant in the complaint.** Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, you must number and set forth each claim in a separate paragraph. **UNRELATED CLAIMS MUST BE RAISED IN SEPARATE COMPLAINTS WITH ADDITIONAL FILING FEES. NO MORE THAN FIVE (5) TYPED OR TEN (10) NEATLY PRINTED PAGES MAY BE ATTACHED TO THIS COMPLAINT. (LR PL 3.4.4)**

CLAIM 1: On or around Dec. 28th, 2017 while in ambulatory restraints LT. Whetstone had two C.O.'s sexually assault me. While conducting a 2 hour LT. check LT. Whetstone noticed I had smeared feces all on the wall and was mad about this. LT. Whetstone was also mad at Plaintiff because of

Supporting Facts: Plaintiff can't remember the exact dates

CLAIM 1 cont... pt 2

his behavior in the SHU. Officers were complaining to LT. Whetstone about his behavior and writing Plaintiff incident reports daily, sometime two to three times a day. Upon entering the restraint cell and seeing feces on the wall LT. Whetstone was mad. Upon checking Plaintiff restraints LT. Whetstone struck Plaintiff upside the head with his closed fist. Upon being struck upside the head Plaintiff fell to his knees. As Plaintiff tried to get up LT. Whetstone grabbed Plaintiff around the neck and lifted him up off the ground. Plaintiff told LT. Whetstone that he was hearing voices and that he needed help. LT. Whetstone told Plaintiff he was about to get all the help he needed. LT. Whetstone then told Ofc. Fabery to come stick his finger in my anal. Plaintiff tried to resist but it wasn't much Plaintiff could do. When Ofc. Fabery pulled down the paper clothing shorts Plaintiff had on he stuck his finger in my anal. Once Ofc. Fabery moved from behind Plaintiff, Plaintiff then heard LT. Whetstone tell Ofc. Kitchen to come stick his finger in Plaintiff's anal. When Ofc. Kitchen stuck his finger in Plaintiff's anal, Plaintiff passed out. Plaintiff not sure if Ofc. Lewis and LT. Whetstone stuck their finger in his anal because he was passed out. When Plaintiff finally awoke he was bent over the bunk with his shorts pulled down to his ankles. Once Plaintiff got himself together he layed down on the bunk and cried. Once the C.O.'s did a 15 min check they told Plaintiff if he told anybody they'll be back to see him again. On or around Dec 29th, 2017 LT. Whetstone fabricated federal documents to have Plaintiff placed in four point restraints. When LT. Whetstone came to do a 2 hour LT. Check he told Plaintiff we were alright until you smeared feces all on the wall. Plaintiff told LT. Whetstone that he was going to contact his family and have them contact the O.I.G. to inform them of what LT. Whetstone and his C.O.'s did to him.

CLAIM 1 cont.... pt 3

LT. Whetstone said, "that sound like a threat to me". LT. Whetstone then told a C.O. go get some leg irons and then LT. Whetstone placed Plaintiff in four point restraints. LT. Whetstone placed Plaintiff in four point restraints so he couldn't inform the Warden, Capt. A.W.'s about what he had done to Plaintiff. However, A.W. Mr. Keyes did a round and Plaintiff told A.W. Mr. Keyes that he was sexually assaulted and that he really needed to see medical. A.W. Mr. Keyes told Plaintiff once he came out of restraints and cleaned himself up (because Plaintiff had feces all over his body and cell) we'll talk. Once Plaintiff was released from restraints he notified Institutional Duty Officer Ms. Harding and Psychologist Dr. Crouch about the sexual assault. However, nothing was done. Plaintiff asked I.D.O. Ms. Harding and Dr. Crouch who did they notify and they both told Plaintiff that according to BOP policy they had to notify the Operational LT. The Operational LT. was LT. Whetstone. LT. Whetstone never documented or notified the PREA Coordinator (A.W. Mr. Keyes) about Plaintiff's sexual assault. LT. Whetstone never notified anybody because the sexual assault allegation was against him. Two weeks after the incident happened the Capt. did rounds in the SHU and Plaintiff told him what had happened. However, Plaintiff still didn't see anybody. Once again, the Capt. did rounds in the SHU the next day and Plaintiff told him again about what had happened to him. The Capt. said, "You telling me you didn't see anybody yesterday?". Plaintiff told him no and the Capt. told Plaintiff once he finish his rounds in the SHU he was going to call and make sure S.I.S. came to speak with him. It took 13 days for Plaintiff to see medical and Plaintiff told multiple staff. Plaintiff told three I.D.O.'s, a psychologist, a chaplain, P.A. Meyers, and Unit Manager Mr. Jones, and A.W.

CLAIM 1 cont... pt 4

Mr. Keyes. Because Plaintiff filed a PREA claim against LT. Whetstone, he retaliated against Plaintiff. On or around Feb 17th, 2018 LT. Whetstone physically assaulted Plaintiff along with two other C.O's. LT. Whetstone fabricated federal documents and said Plaintiff assaulted him. LT. Whetstone and two other C.O's slammed Plaintiff to the ground and kicked Plaintiff all in the face, back, and stomach. Instead of hitting his duress button LT. Whetstone ran out the restraint cell and went to grab a can of mace and sprayed it directly in Plaintiff's face emptying out the whole can. After spraying Plaintiff LT. Whetstone hit his duress button and the escorted Plaintiff out the cell. Later on that day Plaintiff was transferred to another BOP institution.

Supporting Facts concept 2

and times because as of this writing Plaintiff is in transit and do not have his personal property. Plaintiff needs his personal property for exact dates and times. Plaintiff notified I. D. O. Ms. Harding and multiple other I.D.O's, Psychologist Dr. Crouch, a Capt, Unit Manager Mr. Jones, PA. Mr. Myers, I. D. O, Ms. Harding and Psychologist Dr. Crouch notified the Operational LT.

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CLAIM 2: N/A

Supporting Facts: N/A

CLAIM 3: N/A

Supporting Facts: N/A

CLAIM 4: N/A

Supporting Facts: N/A

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CLAIM 5: N/A

Supporting Facts: N/A

VI. INJURY

Describe **BRIEFLY** and **SPECIFICALLY** how you have been injured and the exact nature of your damages.

Plaintiff suffered injury to his anal as well as his
mental health. Because of being sexually assaulted Plaintiff
have attempted suicide on multiple occasions by cutting
his wrist, hanging, swallowing batteries and hungry striking,

VII. RELIEF

State **BRIEFLY** and **EXACTLY** what you want the Court to do for you. *Make no legal arguments. Cite no cases or statutes.*

I want the Court to make Lt. Whetstone, Ofc. Kitchen, Ofc.
Fabery, and Ofc. Lewis to pay me \$50,000 a piece and
Ad. Mr. Keyes \$100,000 for pain and suffering and for
sexually assaulting me.

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DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and accurate. Title 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at AUSP Thomson on 1-20-20.
(Location) (Date)

Larell Bone
Your Signature

